

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHARLES D. SKENANDORE,

Plaintiff,

v.

Case No. 24-cv-1552-pp

DR. CHAD SEUBERT, *et al.*,

Defendants.

**ORDER DECLINING TO ADOPT REPORT AND RECOMMENDATION
(DKT. NO. 8), DIRECTING CLERK OF COURT TO CONVERT PLAINTIFF'S
MOTION TO DISMISS TO NOTICE OF VOLUNTARY DISMISSAL AND
TERMINATE CASE AND DENYING AS MOOT PLAINTIFF'S REQUEST FOR
LEAVE TO PROCEED WITHOUT PREPAYING FILING FEE (DKT. NO. 2)**

On December 2, 2024, the court received plaintiff Charles D. Skenandore's 42 U.S.C. §1983 civil rights complaint and his motion for leave to proceed without prepaying the filing fee. Dkt. Nos. 1, 2. On December 9, 2024, Magistrate Judge Nancy Joseph, to whom the case was assigned, ordered that to proceed in this case, the plaintiff must pay \$96.57 as an initial partial filing fee by January 9, 2025. Dkt. No. 5. On December 30, 2024, the court received from the plaintiff a motion to voluntarily dismiss his case because he is unable to pay the initial partial filing fee and would like to refile when he has the money to proceed. Dkt. No. 7.

On January 3, 2025, Judge Joseph issued a report on the plaintiff's motion to dismiss, recommending that this court grant it and dismiss the case without prejudice. Dkt. No. 8. She informed the plaintiff that he could file a written objection within fourteen days. *Id.* at 2 (citing 28 U.S.C. §636(b)(1)(B)

and (C); Federal Rule of Civil Procedure 72(b)(2), and General Local Rule 72(c) (E.D. Wis.)). The case was reassigned to this court to decide whether to accept Judge Joseph's report and recommendation. Id.

The deadline for the plaintiff to file a written objection to Judge Joseph's order has passed, and the court has received no objection. The court has reviewed Judge Joseph's order *de novo*. Rather than granting the plaintiff's motion, the court finds that it should dismiss the case under Fed. R. Civ. P. 41(a)(1)(A)(i). Under that rule, a plaintiff may dismiss a lawsuit without seeking a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). The plaintiff filed his motion to dismiss before the court had screened his complaint and ordered service on any defendant, and no defendant has filed an answer or motion for summary judgment. That means that the plaintiff's motion to dismiss is self-executing, and no court order is needed to dismiss the case. The clerk must close the case under Rule 41(a)(1)(A)(i). The plaintiff remains obligated to pay the full \$350 filing fee.

The court **DECLINES TO ADOPT** Magistrate Judge Joseph's report and recommendation. Dkt. No. 8.

The court **ORDERS** the Clerk of Court to convert the plaintiff's motion to dismiss (Dkt. No. 7) to a notice of voluntary dismissal and **TERMINATE THE CASE** under Fed. R. Civ. P. 41(a)(1)(A)(i).

The court **DENIES AS MOOT** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

The court **ORDERS** that the agency that has custody of the plaintiff must collect from his institution trust account the **\$350** filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the plaintiff's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. §1915(b)(2). The agency must clearly identify the payments by the case name and number. If the plaintiff transfers to another county, state or federal institution, the transferring institution must forward a copy of this order, along with the plaintiff's remaining balance, to the receiving institution.

The court will send a copy of this order to the Brown County Sheriff, who oversees the Brown County Jail where the plaintiff is incarcerated.

Dated in Milwaukee, Wisconsin this 27th day of January, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge